

Remarks

This amendment is responsive to the official action mailed March 11, 2005, and is accompanied by a Petition for Extension under 37 C.F.R. §1.136(a) and a charge authorization for the required fee for a two month extension.

The number of claims remain within the number for which fees have already been paid.

Amendments to the specification have been made to remove the reference to a specific numbered claim. Applicant has corrected a reversal in references made to numbered Figs. 1 and 2 at the beginning of the description of the drawings. The need for this correction is apparent and no new matter is presented.

The claims have been amended to more particularly and distinctly define the subject matter of the invention and to better distinguish from the prior art of record. Claims 6 and 14 were considered indefinite due to an alternative expression in claim 6 and a lack of clear antecedent basis for "the guide groove" in claim 14. These matters are corrected by amendment of claim 14 and the addition of new claims 15-18 for certain alternative expressions from claim 6 and other claims. The claims as amended are definite. New claim 19 is presented to further define the invention.

Applicant submits the requested copy of DE 19650000, which apparently was not found with the other documents cited in the Information Disclosure Statement of February 23, 2004.

In the official action, claims 1-3 and 9-13 were rejected as anticipated by US Pat. Des. 291,912 - Fabian. Reconsideration is requested in view of this amendment.

In the statement of the rejection for anticipation by Fabian, the examiner points out that the showerhead guide and the auxiliary guide in Fabian appear above and below Fabian's lower wall bracket. Claim 1 as initially filed stated that the guide for the showerhead holder and the auxiliary guide that extend along the wall mounting element are independent. The claims have now been amended to recite that the auxiliary guide is independent of the primary guide. The additional sanitary item (besides the showerhead and showerhead holder) is slidable independently of the showerhead holder along the auxiliary guide over a same sliding range as the showerhead holder. This further defines the independence according to the invention. Applicant's longitudinal wall mounting element has independent sliding guides that allow the showerhead holder and the additional sanitary item carried by the auxiliary guide to be slidable independently in that they can slide past one another over the same range. This aspect of the invention is particularly claimed, and is not disclosed or suggested by Fabian, whether considered alone or together with the other prior art of record. Applicant requests reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §102, and reconsideration of the rejections applied to the claims depending from claim 1.

Re claim 2, which states that the showerhead holder guide and the auxiliary guide are parallel, the examiner cites Fabian's Figs. 3-4, which are top and bottom end views. These views show that the sliding rod in Fabian has co-linear portions. The co-linear portions above and below the lower wall bracket support the showerhead holder and the additional sanitary items, respectively, on different lengths of the same support rod. The implication of the rejection is that successive segments of a straight line are "parallel." Accepting that position, the successive segments cannot be construed to provide independent sliding guides over a same sliding range as in claim 1, and cannot allow the guided items to pass independently over the same sliding range as in claims 1 and 19. Therefore, Fabian does not meet claim 2, or claim 1, from which it depends. Nor is the claimed subject matter suggested as a whole.

If one attempts to slide the Fabian showerhead holder down and/or the Fabian additional sanitary item up (the bowl-shaped receptacle), they will encounter the lower

wall bracket and be stopped. The lower wall bracket distinctly divides the wall mounted rod to separate the sliding ranges of the showerhead holder and additional sanitary item into different ranges above and below the lower wall bracket. Fabian does not meet the requirement for sliding over the same range.

Assuming that a person of ordinary skill might decide to omit Fabian's lower wall bracket, or perhaps assemble the Fabian structure in a different order (although neither possibility is disclosed in Fabian's design patent description or illustrations), it might be possible to place both the showerhead holder and the additional sanitary item holder on the guide rod before mounting the lower wall bracket. In that case, the showerhead holder and the additional sanitary item both would be placed on a continuous vertical span of the guide rod, e.g., between upper and lower wall brackets. However that modification of Fabian would not meet or suggest applicant's claimed invention as a whole. In addition to having one guide structure rather than comprising primary and auxiliary guide structures, Fabian's two items, made slidable on the same length of guide rod, cannot be positioned independently of one another. The items could not be moved to any position along the sliding range because they could not pass one another. The only way to move the showerhead holder indefinitely down (or the additional item up) is to provide clearance, and if necessary to push the other additional sanitary item down or the showerhead holder up, so as to provide clear space along the single common sliding structure provided for both items.

Applicant's claims define two independently positionable guides over the same range. Fabian lacks a disclosure of the invention as claimed. Furthermore, there is no suggestion or routine incentive apparent from Fabian as to how or why one might modify Fabian to more nearly resemble applicant's claimed invention by making the showerhead holder guide and the auxiliary guide independent so as to permit the items carried in the guides to pass independently in moving along their respective ranges.

Re claim 13, the examiner takes the position that the Fabian lower wall bracket engages the auxiliary guide and is joins two lengths of the wall mounting element. This application of the claim language cannot be applied to the claims as amended.

Fabian's single guide rod has only one guiding surface. It is formed by an integral rod as opposed to joined lengths. If as suggested one finds that the mounted rod is subdivided into two elements by the lower wall bracket, one plainly cannot construe the rod as providing independent guide surfaces that enable independent sliding positioning over the same range. Reconsideration and allowance are requested of claims 1, 2, 12 and 13.

Re claim 5, which recites that the showerhead holder guide faces forward and the auxiliary guide faces sideward, the examiner asserts that Fabian discloses this orientation. Reconsideration is requested. The structures of Fabian's showerhead holder guide and auxiliary guide are different co-linear lengths of the same cylindrical guide tube. This is seen from the discussion of claim 1 above. As a cylindrical structure, the guides do not face in any particular direction. In the arrangement of parts shown in Fabian's Figs. 1 and 2, the showerhead holder protrudes forwardly and the auxiliary bowl shaped receptacle protrudes sideward. However this is only possible in Fabian because the guide rod is a single cylindrical structure. Items placed on it might can be turned in any direction but they cannot be independently positioned, regardless of where they are turned. Fabian lacks any disclosure or suggestion of a primary guide and an auxiliary guide that are oriented in different directions on an elongated guide element wherein the respective guides provide independent sliding capability over the same range.

The claims have been amended to more particularly and distinctly define the aspects of the invention that differ from Fabian. Whereas there is no suggestion in Fabian of a guide structure characterized by independent sliding guides over the same range, and no suggestion in Fabian of any comparable need for independent slidable positioning as claimed, the rejections of claim 1 and the claims depending from claim 1, as now amended, lack support. Applicant requests that they be withdrawn.

As discussed above, claims 6 and 14, which were regarded as indefinite, have been corrected as to the aspects pointed out by the examiner. These claims and the other pending claims are definite.

Claim 4 was rejected as obvious over Fabian under 35 U.S.C. §103. This claim recites that the shape of the showerhead holder guide and the auxiliary guide are different. The rejection states that different shapes would be obvious expedients in the absence of unexpected results.

The rejection of claim 4 appears to be based on a suggestion that the person of ordinary skill might arbitrarily choose a different shape for the portion of Fabian's guide rod above the wall mounting bracket as compared to the shape of the guide rod below the wall mounting bracket. Claim 4, which incorporates independent claim 1 as amended, requires that the guides be arranged for sliding over the same range. The only way that Fabian could be considered to suggest such an arrangement is if the same guiding rod had two shapes at the same time over the same length. This would certainly be unexpected to a person of ordinary skill who sought without hindsight to apply Fabian's integral cylindrical guide bar. Fabian fails to present a prima facie case of obviousness. The differences with respect to the claims as amended are more than choices of routine expedients. The differences are such that the subject matter claimed as a whole would not have been obvious to a person of ordinary skill.

Claims 7 and 8 were rejected over a combination of Fabian and DE 8506749, the latter showing undercut grooves (e.g., 23 in Fig. 4) that receive complementary sliders (e.g., 24 in Fig. 5) of the showerhead holder. Apparently the examiner suggests that the DE'749 structure could be substituted for the guide rod in Fabian, above or below the lower wall bracket. Reconsideration is requested. The DE'749 reference is consistent with Fabian in that upper and lower supported elements (shown in Figs. 5 and 6, respectively) are carried in the same co-linear guide structure. They cannot pass one another and be positioned independently over the same range. Although DE'749 has grooves on both lateral sides (i.e., two grooves), they are both used to individual items. The grooves are not shown or suggested to be guide grooves for independently positioned structures that might slide by one another over the same range. The combination of Fabian and DE'749 does not meet the invention claimed.

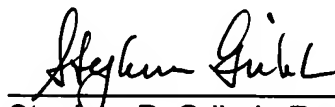
Claims 1-10 and 12-14 were alternatively rejected over the published application US 2004/0049843 – Glunk. Glunk has a slot 9 for a showerhead holder on the front, and two slots 14 at the rear. Glunk teaches that the rear slots 14 are useful for holding elements. As with DE'749, it is only by hindsight that one might suggest that the two slots 14 in Glunk might be support separate additional sliding items that are moved around independently of one another and of the showerhead holder in slot 9. The reference does not teach or suggest such a feature. Slots 14 in Glunk are structures provided for receiving holders by which the unit normally is mounted, namely in a corner of a shower stall. If the unit is mounted on a flat wall surface, the slots can hold an edge structure that bridges around the front. In Glunk's embodiment shown in Fig. 1, the shelf 5 might be considered an additional sanitary item besides the showerhead holder. It slides up and down independently of the showerhead holder, except for the fact that even where the prior art has laterally separated sliding grooves as in Glunk, the prior art still fails to teach or suggest or provide a structure capable of independent positioning over the same range. The structure disclosed in Glunk is such that there would be interference between shelf 5 and slot 9 if one tried to adjust the shelf and the showerhead holder to any overlapping point in their range. Even if one considers the examiner's suggested modifications, the result is not the concurrent provision of a showerhead holder guide and an auxiliary guide that are arranged for independent positioning over the same range.

Applicant therefore requests that the rejection over Glunk of Claims 1-10 and 12-14 under Section 102 be withdrawn. Applicant notes that Glunk is not be citable against applicant under 35 U.S.C. §103(c). The Glunk application is owned by the assignee of the present application, and was commonly owned with the present application, or subject to an obligation to assign, at the time the invention was made.

The application is in proper form. The claims as amended are definite. The differences between the invention and the prior art are such that the subject matter claimed, as a whole, is not shown to have been known or obvious. Therefore, the application is in condition for allowance. Reconsideration and allowance are hereby requested.

Respectfully submitted,

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